

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL WARZEK,

Plaintiff,

v.

VALLEY STATE PRISON, et al.,

Defendants.

No. 1:20-cv-00027 NODJ GSA (PC)

ORDER GRANTING DEFENDANTS'  
REQUEST FOR EXTENSION OF TIME TO  
FILE EXHAUSTION MOTION

ECF No. 63

DEFENDANTS' EXHAUSTION MOTION  
DUE **MARCH 8, 2024**

Defendants have filed a "Motion for Administrative Relief Re: Modify [sic] Scheduling Order [ECF No. 59]" along with a declaration by their counsel in support of same. ECF No. 63. Ultimately, the motion is a request for a seven-day extension of time for Defendants to file their exhaustion-based motion for summary judgment.

This is Defendants' second request for an extension of time to do so. See ECF Nos. 58, 59 (first extension request; order granting same, respectively). Defendants' exhaustion-based motion for summary judgment was due March 1, 2024. See ECF No. 59 at 2 (order granting Defendants' motion to modify scheduling order). For the reasons stated below, the motion will be granted.

In support of Defendants' motion counsel for Defendants avers that despite her best efforts she has been unable to secure a necessary declaration from a third-party California

1 Department of Corrections and Rehabilitation employee in support of Defendants' soon-to-be-  
2 filed motion for summary judgment. ECF No. 63 at 3-4 (Decl. of DAG Lila Garlinghouse).  
3 According to counsel, it appears that the third party in question has been delayed in reviewing the  
4 draft declaration Defendants' counsel sent to him/her.<sup>1</sup> See id. Counsel states that notice of this  
5 ex parte extension of time request will be sent to Plaintiff. See ECF No. 63 at 4.

6 Good cause appearing, IT IS HEREBY ORDERED that:

- 7 1. Defendants' Motion for Administrative Relief Re: Modify [sic] Scheduling Order  
8 (ECF No. 63) is GRANTED, and  
9 2. Defendants' exhaustion-based motion for summary judgment shall be filed no later  
10 than **March 8, 2024**.

11 **All other directives in the discovery and scheduling order (ECF No. 55) are to**  
12 **remain in full force and effect.**

13  
14  
15 IT IS SO ORDERED.

16 Dated: **March 5, 2024**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE

17  
18  
19  
20  
21  
22  
23  
24  
25 

---

<sup>1</sup> Counsel for Defendants also states that because Plaintiff is incarcerated and he is proceeding  
26 pro se, he will not be prejudiced by a grant of the extension of time request. ECF No. 63 at 3  
27 (Decl. of DAG Lila Garlinghouse). The Court notes for the record that neither Plaintiff's  
28 incarceration status, nor the fact that he is proceeding in forma pauperis in these proceedings,  
without more, bears little on whether Plaintiff will be prejudiced by a grant of Defendants'  
extension of time request.